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## Use of Race in School Placement Curbed

By [DAVID STOUT](#)

WASHINGTON, June 28 — In a decision of sweeping importance to educators, parents and schoolchildren across the country, the [Supreme Court](#) today sharply limited the ability of school districts to manage the racial makeup of the student bodies in their schools.

The court voted, 5 to 4, to reject diversity plans from Seattle and Louisville, Ky., declaring that the districts had failed to meet “their heavy burden” of justifying “the extreme means they have chosen — discriminating among individual students based on race by relying upon racial classifications in making school assignments,” as Chief Justice [John G. Roberts Jr.](#) wrote for the court.

Today’s decision, one of the most important in years on the issue of race and education, need not entirely eliminate race as a factor in assigning students to different schools, Justice [Anthony M. Kennedy](#) wrote in a separate opinion. But it will surely prompt many districts to review and perhaps revise programs they already have in place, or go back to the drawing boards in designing plans.

The opinion’s rationale relied in part on the historic 1954 decision in *Brown vs. Board of Education* that outlawed segregation in public schools — a factor that the dissenters on the court found to be a cruel irony, and which they objected to in emotional terms.

Chief Justice Roberts said the officials in Seattle and in Jefferson County, Ky., which includes Louisville, had failed to show that their plans considered race in the context of a larger educational concept, and therefore did not pass muster.

“In the present cases,” Chief Justice Roberts wrote, recalling words from an earlier Supreme Court ruling, “race is not considered as part of a broader effort to achieve ‘exposure to widely diverse people, cultures, ideas, and viewpoints.’ ”

“Even as to race,” he went on, “the plans here employ only a limited notion of diversity, viewing race exclusively in white/nonwhite terms in Seattle and black/other terms in Jefferson County.

“Classifying and assigning schoolchildren according to a binary conception of race is an extreme approach in light of this court’s precedents and the nation’s history of using race in public schools, and requires more than such an amorphous end to justify it.”

In the now familiar lineup, Justices Kennedy, [Antonin Scalia](#), [Clarence Thomas](#) and [Samuel A. Alito Jr.](#) sided with the chief justice on most points.

Rather than working toward a level of diversity and its “purported benefits,” the chief justice wrote, the school had “worked backwards to achieve a particular type of racial balance.”

“This is a fatal flaw,” the ruling said. “When it comes to using race to assign children to schools, history will be heard.”

The four dissenters wrote, in effect, that the majority was standing history on its head. Justice [Stephen G. Breyer](#) said that today’s result “threatens to substitute for present calm a disruptive round of race-related

litigation, and it undermines Brown's promise of integrated primary and secondary education that local communities have sought to make a reality."

"This cannot be justified in the name of the Equal Protection Clause," Justice Breyer went on, alluding to the Fourteenth Amendment to the Constitution, which bars states from denying people "the equal protection of the laws."

Justice Breyer's dissent was joined by Justices [David H. Souter](#), [Ruth Bader Ginsburg](#) and [John Paul Stevens](#), the tribunal's longest-serving member, who wrote a separate dissent that was remarkable for its feeling.

"While I join Justice Breyer's eloquent and unanswerable dissent in its entirety, it is appropriate to add these words," Justice Stevens wrote. "There is a cruel irony in the chief justice's reliance on our decision in *Brown vs. Board of Education*."

Today's ruling breaks faith with the 1954 ruling, Justice Stevens asserted. "It is my firm conviction that no member of the court that I joined in 1975 would have agreed with today's decision," he wrote.

Justice Kennedy's opinion concurring in part with Chief Justice Roberts, and with the overall judgment, agreed that the Seattle and Louisville plans went too far. However, in language that some people on the losing side found heartening, he said that race may still be a component of plans to achieve diversity in the schools.

"Diversity, depending on its meaning and definition, is a compelling educational goal a school district may pursue," he wrote.

But Mark Rahdert, a Temple Law School professor and a former clerk to Supreme Court Justice Harry A. Blackmun, said that today's ruling means that "racial balance" will be "the new catchphrase conservatives will use to attempt to eradicate any form of affirmative action."

As for Justice Kennedy's "willingness to leave the door open to some forms of affirmative action," it will be impossible as a practical matter, Mr. Rahdert said.

The decision today, in *Parents Involved in Community Schools v. Seattle School District*, No. 05-908, and *Meredith v. Jefferson County Board of Education*, No. 05-915, runs to some 180 pages, including the dissents. It was eagerly awaited by the National School Boards Association and by the Council of the Great City Schools, representing 66 urban districts, which had filed briefs on behalf of Seattle and Louisville and had warned of disruption if the justices overturned lower court rulings upholding the diversity plans.

The Bush administration participated as a "friend of the court" on behalf of the plaintiffs who challenged the diversity plans.

One plaintiff was a white woman in Louisville whose son was denied a transfer to attend kindergarten in a school that needed more black pupils to keep its black population at the district's required minimum of 15 percent.

The other plaintiffs were Seattle parents who opposed the district's "tiebreaker" system, which applies only to the city's 10 high schools and is aimed at keeping the nonwhite proportion of their student bodies within 15 percentage points of the district's overall makeup, which is 60 percent nonwhite.

Harry Korrell, lead attorney for the plaintiff-parents in Seattle, said his clients were "very pleased" with today's decision. "This case was about protecting all children — regardless of skin color — from race discrimination," he said.

Unlike the Seattle district, the Jefferson County school system was once segregated by law. Its current diversity

plan was adopted in 2000, after the district emerged from 25 years of federal court supervision.

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